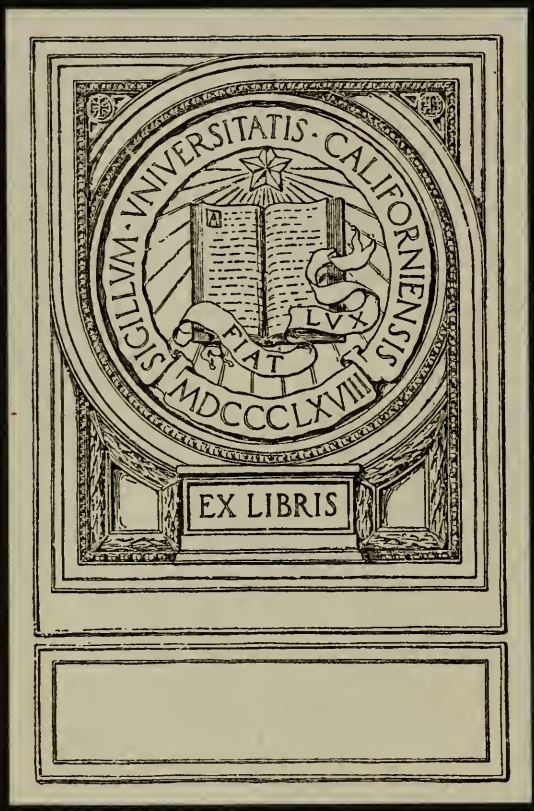
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GREAT BRITAIN AND NEUTRAL COMMERCE.

PART I.:

GREAT BRITAIN AND THE RIGHT OF SEARCH.

PART II:

THE BRITISH BLOCKADE OF GERMANY.

BY

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AND

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GREAT BRITAIN AND NEUTRAL COMMERCE.

PART I.

GREAT BRITAIN AND THE RIGHT OF SEARCH

All wars give rise to questions between belligerent and neutral powers as to their respective rights. The relations between the different states of the world are regulated by a body of customs and precedents which have their origin in the past. Occasionally this body of convention and usuage receives the addition of provisions expressly agreed to by treaty between certain powers, and from time to time also it is modified in accordance with new conditions, as occasion arises, by the action of belligerent powers and the immediate or eventual acquiescence of neutrals. This acquiescence has its origin in the recognition of the vital fact that a belligerent fighting with his back to the wall and for his national existence cannot reasonably be bound by methods of procedure out of touch with the conditions of the time and which hamper rather than enforce the main principles on which international law is founded.

International law indeed is not a stagnant body of ancient usage, but rather a living body of customs which preserve their validity by conforming to the progress of the world. The Governments of the various powers and their Prize Courts pay regard to this body of usage. But in the strict sense it is not law at all, for there exists no tribunal and no international force to give it the sanction of "law" as we commonly use the term. Its "sanction," in the legal sense, does not exist, but in the moral sense its sanction may be found in the public opinion of the world, and in the fact that no nation which violates international precepts can justly hope to claim their protection. The belligerent of to-day may be the neutral of to-morrow, and the precedents a belligerent creates may modify international law to his disadvantage later on. Every stick he cuts may be used on his own back.

The problems which have arisen in the present war with regard to the respective rights of Great Britain and of the United States and other neutral powers fall roughly into two classes. One embraces the many difficult questions which circle round the character and final destination of goods and may be roughly called the contraband problem. The other touches the exercise of the right of search of neutral ships by the naval forces of Great Britain. We propose to reserve consideration of the problem of contraband for a future article, and to confine ourselves in the present instance to the question of Great Britain's attitude and action as to the visitation and search of neutral vessels.

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What is known as the right of search is firmly established by international law and is not questioned to-day. It is based upon the right of every belligerent to deprive his enemy of the means to make effective war. It is a matter of common agreement that a neutral vessel cannot lawfully resist visitation and search by a belligerent warship. Lord Stowell in the case of the *Maria* (1 C. Rob. 359) so far back as 1799 showed that this right of visit and search was clearly established beyond all doubt.

> "The right of visiting and searching merchant ships upon the high seas whatever be the ships, whatever be the cargoes, whatever be the destination, is an incontestable right of the lawfully commissioned cruisers of the belligerent nation. . . . . This right is so clear in principle that no man can deny it who admits the legality of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured it is impossible to capture. . . . . The many European treaties which refer to this right refer to it as pre-existing and merely regulate the exercise of it. All writers upon the law of nations unanimously acknowledge it."

It is also acknowledged that to stop on the signal of a lawfully commissioned war vessel is not merely a duty of common sense on the part of a neutral merchantman, but also a duty binding by law. In the American rules issued on 20th June, 1898, for the guidance of United States naval officers this is made clear. Paragraph 12 of these rules is as follows:—

> "The belligerent right of search may be exercised . . to determine their nationality, the character of the cargo, and the ports between which they are trading."

Paragraph 14 reads:—

> "Irrespective of the character of the cargo or of her purported destination a neutral vessel should be seized if she attempts to avoid search by escape; but this must be clearly evident."

In short the right of search is a clearly established principle of international law and the points of criticism which have arisen are levelled not against the right of search itself, but against the particular method in which it has sometimes been exercised. The main criticism of Great Britain's present and recent action is that neutral ships have been taken into port to be searched. This is spoken of by some as if it were a new departure. We propose to show in the first place that this method of exercising the right of search is by no means without ample precedent; and then to discuss the modern conditions of commerce and of warfare which have made this particular method of exercising the right imperative, and the means which have been taken to render this method as little onerous as may be to the neutral interests concerned.

I. It is plain that no belligerent can abandon the right of search; it is clear also that it is of the essence of the right that it shall be effective. The principle at stake is the right to make an effective investigation into the character, ownership and destination of cargoes. That principle is unchallenged and remains. No nation will ever, or can ever, abandon it. To do so would be suicidal. At the worst any changes in this respect which are charged against the British Government are changes not of principle but changes of method necessary to preserve the principle.

It is interesting, however, to note that what is spoken of as a new departure by Great Britain—the taking of vessels into port for search—is really a hoary and time-hallowed way of exercising the right. So long ago as 1808 Lord Ellenborough in the case of *Barker* v. *Blakes* (9 East at p. 292) treated the taking of vessels into port as a well recognised and established custom. "The American" the report of his judgment reads "was at liberty to pursue his commerce with France and to be the carrier of goods for French subjects; at the risk indeed of having his voyage intercepted by the goods being seized; or of the vessel itself, on board which they were being detained or brought into British ports for the purpose of search."

It is not surprising to find that the obvious convenience of search in a port, even in days before it was so necessary as at the present time, led belligerents to adopt this method.

As was pointed out by Sir Edward Grey in his communication of the 10th February to the American Government. "The present conflict is not the first in which this necessity has arisen: as long ago as the Civil War the United States found it necessary to take vessels into the United States ports in order to determine whether the circumstances justified their detention." Sir Edward Grey also pointed out that the same need arose during the Russo-Japanese War and also during the second Balkan War when British vessels were compelled to follow cruisers to some spot where the right of search could be more conveniently carried out, and that this was ultimately acquiesced in by the British Government.

It is clear then that Great Britain has not done anything unprecedented, and a consideration of the conditions of modern commerce and of modern naval warfare makes it clear that the action of Great Britain in taking vessels to port for search is bound, in the nature of things, to be adopted more and more widely in future if the right of search is to be preserved at all.

II. The conditions under which modern commerce is carried on are so entirely different from the conditions which prevailed a century ago that in many respects the old usages of international law cannot be followed without gravely imperilling the very principles of international law itself. Railways and telegraphs have so revolutionised commerce that a belligerent power can quickly order and obtain delivery of such goods as it requires for the carrying on of war, through an adjacent neutral country. The days are past when the carriage of goods in large quantities could only be effected by sea, and with the change there has arisen a situation in which the ports of an adjacent neutral power may for all practical purposes be really the ports of the belligerent power itself. Even at the time of the Civil War in America this change in the conditions of commerce had begun to operate and resulted in judgments by the American Courts which greatly expanded the doctrine of continuous voyage. It is clear that the immunities granted by the usuages of the past to ships and cargoes bound for a neutral port must be re-examined if the principle of international law is to be preserved that every belligerent may deprive his enemy of the means to make effective war. The many

difficult questions which circle round the character, possible use, and ultimate real destination of goods must necessarily be the subject of careful consideration at the hands of all the powers when the present war is at an end. In a later article we intend to discuss the questions of principle involved and their application in the light of modern conditions. For the present we confine ourselves to the necessary difference which the change of conditions has made in the method of effecting search.

The days have gone for ever when overseas commerce was carried on in small sailing vessels with small cargoes that could be searched in a few hours. The size of modern ships, ever tending to increase, the great bulk of their cargoes, often extending to many thousand tons of miscellaneous goods closely packed in many layers, and the difficulties of search which these facts entail render what in the past was a comparatively short and simple operation an entirely hopeless operation at the present time. The right to search every part of the cargo of a vessel is acknowledged. But take the ordinary steamer engaged in the North Atlantic trade with a cargo deadweight capacity varying from say 5,000 to 20,000 tons. How is such a vessel to be searched at sea? Every hold, every 'tween deck space is packed full: and to make a search every cargo space must be unloaded. Where is the cargo to be put? There is no quay on which to discharge it. There is no room on deck, and if there were, you could not lift weight from the lower holds and put it on the weather deck without so raising the centre of gravity of the ship as to destroy her stability. She would capsize, or at any rate lurch over and shoot the loose cargo into the sea. This would be the case with a calm sea and daylight: what about a rough sea and night?

It is obvious that with large modern ships and enormous cargoes concealment of contraband is rendered a simpler task than in the past. Copper for instance may be so skilfully secreted that it would be impossible to find it without unlading the entire cargo, and examining or weighing large portions of the bales of goods,—an operation utterly impossible at sea. Certain circumstances within the knowledge of the authorities might mark a certain cargo with the strongest suspicion, and even the best search possible under conditions at sea would probably disclose no result. On the other hand search in a port might bring to light contraband material intended for the use of the enemy and a legitimate subject of capture.

The ultimate destination of goods too is always a matter of importance for a belligerent. Is their *prima facie* destination their real destination, or only a mere halting place on the way to the enemy? To this vital question which occupied so much of the time of the American Courts during the Civil War, the documents which a ship carries rarely if ever under modern conditions furnish an answer. The destination named in the documents may be a neutral port but the authorities may have the best possible grounds for suspecting that the destination named is a mere blind. To bring the vessel into port gives time in such a case for inquiries. The record of the Prize Court proceedings in America, during the Civil War, shows how great an importance such inquiries may

have. The *bona fide* neutral trader can claim his goods and receive them with compensation for delay if the destination of the goods is really neutral. On the other hand, as was repeatedly found by the American Courts during the Civil War, where the real ultimate destination of the goods is not a *bona fide* neutral destination, the real consignee or owner does not care or dare to claim them. If he does it may be found, as was discovered in the case of the *Springbok* which was tried by the American Courts in the year 1866, that the goods are really being negotiated by some trader who is making a business of supplying the enemy. If the real destination of the goods be found to be the enemy, they are a proper subject for seizure if they fall within the prohibited class: and by an extension of the same principle (or more correctly by the return to the old principle in vogue before the declaration of Paris) to which the British Government has been forced by Germany's defiance of the laws of nations and of humanity under the new British proclamation, goods are equally liable to seizure if they are of enemy ownership or origin.

It may safely be assumed that the desire to interfere as little as possible with *bona fide* trade between neutrals—not to speak of the desire to avoid the necessity of paying compensation for wrongful detention—or of setting precedents hurtful to British interests in times to come, has prevented the British authorities from delaying any cargo without precise information or the strongest grounds for suspicion, and the figures recently made public by Sir Edward Grey prove how comparatively small a proportion of vessels have been seized and detained. An additional point ought also to be borne in mind. In the old days adverse winds might have made it a long operation to secure the shelter of a belligerent port for the purposes of search, but to the modern steamship this entails much less delay. In short from the belligerent point of view the attempt to search at sea is, under modern conditions, so useless that it would be the virtual abandonment of an imperative and vital belligerent right; while from the point of view of a neutral the attempt, although vain, would be so lengthy and so very hazardous an operation as to be really out of the question.

III. If the conditions of commerce have changed, the conditions of warfare have changed in equal degree. Consider what occurs when a vessel is stopped for the purpose of search at sea. The signal is given and it is universally acknowledged that the neutral vessel must stop at its peril. The warship which has given the signal then usually puts a portion of her crew on board the merchantman for the purpose of conducting the search. Both vessels are stopped. It is clear that should enemy ships by any means have got news of what is going on, the speed of modern warships makes it possible that a hostile cruiser or destroyer flotilla may come up in the middle of the lengthy operation and may catch the searching warship bereft of a portion of her crew and at a grave initial disadvantage. Fire may be opened and the searching warship may be damaged and the neutral merchantman in its close vicinity may be sunk.

The submarine has furnished an additional peril. As is well known a vessel when stopped is more or less at the mercy of a

submarine. One of the difficulties with which Great Britain has had to contend in the present war has been the use by the German Government of ships under neutral flags acting as supply ships for German submarines: another and supremely important ground for effective search in port. Indeed the case has only to be stated to make it plain, that the search of a merchantman at sea in the old-fashioned manner would, even if practicable, place a burden of unreasonable risk upon the belligerent warship exercising its right. The merchantman may be a mere decoy or the supply ship of a submarine with a submarine cruising in her vicinity, or she may be a *bona fide* neutral ship. In either case the operation would be perilous in these days when submarines are no longer confined to a narrow radius near their own ports and may be cruising about at any point awaiting their opportunity.

It must be emphasized that the peril from submarines would now extend not only to the searching warship, but also to the merchant vessel. By all the rules of international law and humanity hitherto observed, a neutral ship, although subject to the right of search, is safe from destruction so long as she complies with the well known requirements of international law, save in circumstances of a most unusual character. In every circumstance, whatever be the fate of the neutral merchantman and its cargo, the lives of those on board are sacred. In the exercise of her right of search Great Britain in the present war has not destroyed a single neutral vessel or caused the loss of a single life. The policy of the German Government, as recently announced and now followed, sweeps aside the safeguards with which international law has surrounded neutral ships and cargoes and with which considerations not only of law but of humanity have surrounded neutral lives. It is clear, therefore, that the search of a neutral vessel on the high seas, involving an operation under modern conditions most elaborate and lengthy in its character, is not a risk which can properly be imposed either upon the searching warship or upon the neutral vessel. It is clear, further, that as such a search can never under modern conditions be effective it will not in future be regarded by any belligerent power as otherwise than dangerous and useless.

It is clear in our submission that the changes which Great Britain is accused of having made in methods of search are changes warranted by modern conditions and rendered necessary not only for the preservation of the right of effective search which no belligerent nation can abandon, but also in the interests of neutrals themselves. Great Britain in this respect is doing nothing to which she has not submitted herself in the past and to which she is not prepared to submit in future. As a great maritime power she has often been placed, as a neutral, under grave disabilities during hostilities by other nations. We shall consider in a future article the question of blockade and the problems which arise out of it, but lest it be considered that Great Britain has never suffered from the exercise of belligerent rights in which she has been obliged to acquiesce, it ought to be remembered that the blockade exercised over the southern ports by the north in the great American Civil War, by preventing the importation of

cotton into Great Britain, brought more than four hundred thousand of her population in Lancashire to the very verge of starvation. No inconvenience so great in degree has yet been alleged by any neutral nation in this war. The figures given by Sir Edward Grey in his despatch to the American Government and extracted from American official documents show that the trade between the United States and neutral ports since the war began has increased and not diminished. At the most what is alleged is a general inconvenience to trade aggravated in the specific instances—few in proportion—where vessels have actually been detained. The endeavour of Great Britain has been to exercise her undoubted rights with a minimum of hardship and inconvenience to neutral powers.

In the case of the United States the American Ambassador in London is supplied immediately, with details of every American ship which is detained, and wherever possible with the grounds of its detention. In order to obviate delay to neutral ships in British ports a special Committee has been set up by the Government which sits every day to deal promptly with cases as they arise. The British Prize Court deals not only with captures but also with claims for compensation by persons interested in a ship or goods wrongfully captured and detained. The British Government has gone further in the endeavour to inflict as little damage as possible to the interests of traders for machinery has been set up with a view to granting compensation even in the case of persons interested in a ship or cargo condemned by the Prize Court. Such persons have, of course, in law no claim whatever; but a Committee has been constituted to receive and consider claims of the nature of a lien by British, Allied, or neutral third parties against ships or cargoes which have been condemned or detained by orders of Prize Courts and to recommend in what manner, and on what terms, such claims should be met or provided for.

Great Britain, as we have already pointed out, has created no precedent in taking the neutral ships to a port for search. The precedent which she has created is a precedent of another character—a regard for neutral rights and convenience in the unavoidable circumstances of search in port, which is a good example and omen for the future of international law.

PART II.

THE BRITISH BLOCKADE OF GERMANY.

The gross and repeated violation by Germany of the most elementary principles of the laws of nations and of common humanity has in a sense made any examination of mere legal technicalities about "contraband" and "blockade" appear somewhat academic. We are living in times when not the technicalities of law but the fundamental principles of humanity are at stake. And the Power which has in defiance of the accepted laws of war introduced a new horror by the extensive use of poisonous gas; which deliberately conceived and committed the astounding and inhuman outrage upon the "Lusitania" to the loss of hundreds of innocent and neutral lives, and followed it up by the illegal and insulting attack upon the American steamer "Nebraskan"; and which by its habitual submarine attacks upon inoffensive merchantmen and fishing vessels seeks to cut off the food supply of Great Britain, not by any of the methods recognised by law but by the illegal and wanton sacrifice of innocent human life, is in no position to take shelter behind the cover of laws which she has habitually treated as waste paper. But the British Government have rightly declined to enter into a competition of barbarity with Germany. The action which they have taken by way of reply to Germany's career of outrage has been marked by an appreciation of what a great civilised power owes to its own self-respect, and also by a desire to safeguard so far as possible the interests and susceptibilities of neutral powers; and Sir Edward Grey in his note of the 7th January announced that His Majesty's Government cordially concur in the principle stated by the American Government in the Note delivered by Mr. Page to Sir Edward Grey on the 28th December, "that the commerce between countries which are not belligerents should not be interfered with by those at war unless such interference is manifestly an imperative necessity to protect their national safety and then only to the extent that it is a necessity."

The British Order in Council of the 11th of March has naturally given rise to a good deal of discussion in neutral countries. Shortly stated the effect of the proclamation is that a complete blockade is imposed upon Germany. It may be said at once that the chief distinction between the blockade as announced and the blockades of the past lies in the exceptionally lenient treatment provided for in this instance towards the owners of neutral ships and cargoes. The old rigid rule of confiscation applying to the vessel and the cargo alike when engaged in running a blockade is swept aside, and "His Majesty's Government," to quote the words of Sir Edward Grey's despatch of March 15th, "declared their intention of refraining altogether from the exercise of the right of confiscating ships or cargoes which belligerents have always claimed in respect of breaches of blockade. They restrict their claim to the stopping of cargoes destined for or coming

from enemy's territory." The other difference between the present blockade and types of blockade suited to the circumstances of former times is the somewhat wider application of the already established principle of continuous voyage. This has been fastened upon by certain commentators who point out that goods intended for Germany may no longer be sent to her through a neutral port, and upon this distinction attack the British proposals.

As we pointed out in a former article, international law is not a stagnant body of precedents but a living body of principles which maintain their validity and usefulness only by the fact that the methods of their application develop in accordance with the progress of the world. In the present instance the principle at stake is the principle of blockade. What is that principle? It is that a belligerent who possesses the effective power to do so may cut off all supplies of every kind from his enemy and so bring the war to a speedier conclusion. That is the principle which has always been applied in the case of siege when no supplies of any kind are allowed to go through to the beleagured town. It was with the same object that effective naval blockades have in the past been applied against a line of coast. But with the great increase in recent times of the means of inland communication by which large quantities of goods can be transferred by rail with a minimum of delay to any point, it is obvious that, under modern circumstances, the principle which international law admits of depriving the enemy of all supplies, and of all communication with the outer world, and so shortening a war, can no longer have any validity at all if a belligerent can freely import such supplies as he desires through adjacent neutral countries, and in effect use their ports as his own. The principle of blockade can under these circumstances only be maintained by a modification of the methods by which it is applied, and the Government of the United States have most frankly and fairly stated that "the former means of maintaining a blockade may now be a physical impossibility." In the absence of such modified application, the principle is gone and blockade loses its *effective* character: and thereby the one condition which all nations have agreed is essential is abrogated. The effect of the action of the allied Powers is to maintain the validity of the established principle, and to maintain blockade as a reality.

It has been suggested that this retention and application by the allied Powers of the right to cut off supplies from their opponents is in some way an infringement upon neutral rights. It may be said at once that the only reason why the special incidents which attach to the blockade in this instance have not been found to the same degree before is that a situation comparable to the present has never arisen; and now that the allied Governments have been driven by Germany to follow the path always pointed by the logic of international law, can it be suggested that the treatment which they propose for neutral interests is in any way comparable to the harshness of the treatment which a blockade in former days imposed? Which is better for neutral countries, an illogical blockade of the old type with its cast iron rules for

the confiscation of ships and cargoes, or the logical blockade now enforced by the Allies, accompanied at every turn with provisions for the most scrupulous safe-guarding of all neutral interests concerned, and by a complete and prompt machinery for compensation? In the words of Sir Edward Grey in his note to the United States Government, dated March 15th—

> "Subject to the paramount necessity of restricting German trade His Majesty's Government have made it their first aim to minimise inconvenience to neutral commerce. From the accompanying copy of the Order in Council which is to be published to-day, you will observe that a wide discretion is afforded to the Prize Court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the Prize Court under the Order . . . The United States Government may rest assured that the instructions to be issued by His Majesty's Government to the fleet and to the Customs officials and executive committee concerned will impress upon them the duty of acting with the utmost despatch consistent with the object in view, and of showing in every case such consideration for neutrals as may be compatible with that object which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or from Germany."

No doubt after the present war has come to a close, the whole question of blockade will be included in the general survey of international law which the Powers in conference are almost certain to undertake. But it must be clear by now to every international lawyer that such a Conference will be confronted with another and even more pressing task. Germany by her repeated violations not only of the letter of the Hague Conventions but of the very spirit of international law has demonstrated that in future the powers which agree to make or codify international law must also agree to enforce it. The signatories of the Hague Convention of the 18th October, 1907, were in the words of that document "animated by the desire to serve . . . . the interests of humanity and the ever progressive needs of civilisation." They expressly recognised the impossibility of laying down rules to cover all the circumstances which arise during a war but they declared:—

> "Until a more complete code of laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity, and from the dictates of the public conscience."

The indictment against Germany is not merely that she has habitually disregarded the actual letter of the Hague Conventions of 1907. It is beyond question that she has done so; and the various subterfuges by which she has striven to show that the Conventions have no binding force upon her add nothing to her defence. The catalogue of actions forbidden in terms by the various articles of these Conventions, but habitually indulged in by the German military authorities is too long and too well known for it to be necessary to repeat it here, and any fair-minded man who will read the various articles of these Conventions—forbidding as they do the bombardment of undefended

towns, the use of asphyxiating gases, and the maltreatment of the civil population, and extending the protection of law and humanity to peaceful non-combatants and to prisoners—and will compare that Code with the record of Germany during the last ten months will have little patience with the shallow and futile legal quibbles of the German apologists. On the merely legal side the case is overwhelming. The facts and the Conventions speak for themselves.

But at the back of the Hague Conventions there stand those high principles "derived from the law of nations, the laws of humanity and the dictates of the public conscience" to which the Signatories in the passage quoted refer; and the supreme indictment against Germany is that she has outraged those elementary principles and feelings which are the common possession of mankind and are vital to the future of the world.

The clamant problem of the hour is to find a means of extending to these international principles and those common feelings of humanity the sanction and protection of international force, for if this be not done then clearly no code of international regulations is anything but a pious expression of opinion liable to be flouted as soon as the circumstances emerge to which it should be applied.

Until the makers of international law become also its guardians it is obvious that a belligerent confronted by an enemy who disregards international law cannot be expected to accept tamely so grave and unfair a disadvantage. He cannot be asked to suffer national extinction at the hands of the wrongdoer. Otherwise international law would have defeated its own purpose and have become the instrument of injustice. For this reason reprisals to bring the wrongdoer to book are well recognised and sanctioned by international law in its own interests as well as in the interests of belligerents, and they are the only alternative to that vindication of the law of nations by the common action of the powers to which the logic of current events will, it is to be hoped, ultimately lead the world.

While it is evident that Great Britain has adopted her present policy by way of reprisal, it by no means follows that on a deliberate survey the same policy may not be adopted by the common consent of the world as a general rule. It would indeed be hard to discover any other policy which under modern conditions could keep effectively alive the recognised principle of blockade which is so firmly established as a belligerent right. Clearly, as Sir Edward Grey has pointed out, the policy in question infringes no general rule either of international law or of humanity. For the same form of pressure was recognised by international law both in the case of blockade and in the case of siege as a legitimate means of bringing hostilities to an end. For this purpose blockade is so useful and so well recognised a weapon that it will not lightly be abandoned. As regards America in particular it must be remembered that during the Civil War the Federal States applied to the Confederates a blockade of great severity. The British Government, although

urged repeatedly to protest against a course which many authorities still considered to have been an unprecedented extension of the theory of blockade, declined to interfere; and it is a matter of history that the effective blockade was a most material and important factor in the final victory of the North. The policy of the Federal Government, involving as it did an extension of the then recognised methods of blockade, was necessary if the principle was to be effectively preserved.

It may well be doubted whether the United States would ever willingly abandon the right to exercise this form of pressure on an enemy. It is within the region of unfortunate possibilities that at some time in the future the United States might be at war with some other country —say a republic in South America—and might wish again to make use of the weapon of blockade. How could the United States do so effectively if the enemy State were flanked by other States into whose ports great modern ships poured vast cargoes of goods to be conveyed by rail in a continuous stream to the enemy? To make her blockade effective the United States would be forced in logic to take the same type of action as Great Britain has taken. A blockade which lets the enemy's trade *round* is as ineffective as one which lets the enemy's trade *through*. And all nations are agreed that the essential condition of a valid blockade is that it should be effective. And if we complete the parallel by supposing that the enemy State had indulged in months of outrage by air and by sea, and had sacrificed the lives of many hundreds of peaceful American citizens including woman and children, can we conceive that the exercise of a form of pressure well recognised by international law would not be deemed by every good American as a most moderate and appropriate form of reply?

We have already said that although it would appear to be under modern circumstances the only logical way of applying a blockade, the policy announced in the British note was only adopted late in the day, and as a direct consequence of Germany's own conduct.

It is important, accordingly, to bear in mind what Germany's attitude towards international law has been.

Germany, whose regard for neutral rights is so scrupulous where they coincide with her own interests began the war by an unprovoked attack upon a neutral nation whose only desire was to remain neutral and at peace, and whose only fault was that it formed a short cut. Events soon proved that if Germany is no respecter of the neutrality of nations she has paid still less regard to the sanctity with which international law has hedged round the lives and property of the peaceful civil population. It is not only in the territory where she has temporarily established an effective occupation that her career has been marked by scenes of violence, outrage and destruction without precedent in history and without sanction in international law. In regard to the British Islands which at any rate she has not yet effectively occupied her violence has been in proportion to her impotence. In defiance

of law and of humanity and in clear and open violation of Articles 1 and 3 of the Hague Convention No. 8 of 1907([a]) mines admittedly not constructed or placed in accordance with international requirements were sown broadcast in the open seas in the path of merchant vessels. In flagrant violation of Article 1 of Convention No. 9([b]) open and undefended English towns were bombarded and many scores of peaceful men, women and children lost their lives. No offence can be urged against the inhabitants of Scarborough or Whitby. Germany holds herself free to attack unarmed non-belligerents, without distinction of age or sex, upon all occasions where darkness can cover the approach of her vessels, and swift flight complete their immunity. She has shown no desire to repeat the experiment since it was demonstrated to her by the last battle in the North Sea that such crimes were liable to swift punishment. International law in theory confers complete immunity upon the peaceful population of such undefended towns, but as a matter of solid fact their only security to-day lies in the British fleet. For the purpose of defending the peaceful population of Great Britain from indiscriminate destruction of life and property by German vessels or air craft international law is gone. Germany has torn it to tatters.

Let us turn to Germany's attitude towards international law at sea. We have already referred to her mines, illegally constructed and illegally placed. From this particular peril international law protects all merchant vessels whether neutral or not. German mines destroy on contact all vessels whether neutral or not. The practice of sowing such mines in unnotified areas was begun by Germany long before Great Britain was forced to reply by placing anchored mines, constructed in accordance with the requirements of law, in certain restricted and duly notified areas. The German note to the United States, dated March 1st, admits by implication that Germany in defiance of law has sown floating mines and that her anchored mines are not so constructed that if they come adrift they are rendered harmless. It will also have

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([a]) *Article 1.*

It is forbidden :—

1. To lay unanchored automatic-contact mines, unless they be so constructed as to become harmless one hour at most after the person who laid them has ceased to control them ;
2. To lay anchored automatic-contact mines which do not become harmless as soon as they have broken loose from their moorings ;
3. To use torpedoes which do not become harmless when they have missed their mark.

Article 3.

When anchored automatic-contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless after a limited time has elapsed, and, should the mines cease to be under observation, to notify the danger zones as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

([b]) *Article 1.*

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place may not be bombarded solely on the ground that automatic submarine contact mines are anchored off the harbour.

been noted that in the same despatch she has given a point blank refusal to the suggestion that mines should not be used for offensive purposes, and has given no guarantee that the areas of such mines when used will be duly notified. This admission as to the illegal character of her use of mines is notable, but the fact has already been demonstrated by a catalogue of calamities involving the destruction of vessels and lives, both British and neutral. International law is, therefore, no protection to any sailor, however peaceful and however neutral, from German mines.

German cruisers and submarines, however, differ from mines in that they possess the power of discrimination. When a neutral vessel has been destroyed by a mine Germany has feigned surprise at the inevitable result of her own action; in the case of cruisers and submarines this pose is no longer possible. The defiance of neutral rights is renewed afresh upon every occasion when a neutral ship is attacked. The protection which international law accords to all peaceful merchant vessels and in particular to the lives of their passengers and crews, Germany holds herself free to deny. Those on board are lucky indeed if they are even given the chance of entrusting their lives to small boats on the open sea. "They gave us no time to get away" said an officer of the "Falaba" which was torpedoed on the 27th of March, "for they torpedoed us while there were people on board and while one boat was actually being lowered." On that occasion over one hundred lives were sacrificed, including the lives of several women. Their submarine proffered no assistance "We could see," said a passenger on the "Falaba," "her crew laughing at us as the people were struggling in the water."

These proceedings are not in accordance with international law. They mark the culmination of a career of illegality at sea begun by Germany in October, 1914, when the first merchant vessel was attacked by a German submarine. The calculated inhumanity of the later proceedings is more marked but their illegality is no greater. The theory upon which Germany seeks to defend her action is the seizure of the "Wilhelmina" bound with food for Germany, and the recent British proclamation. Unfortunately for Germany, this defence—if it can be called a defence—is not available. The German submarine attacks on merchant vessels were in progress long before the "Wilhelmina" case arose. The submarine war on British trade commenced in October, 1914. Up to the 2nd of December three merchant vessels had been attacked. In that month Admiral Tirpitz in an interview with a press correspondent outlined as a policy the submarine war by Germany on British trade, and from then up to the 3rd of February seven more peaceful merchantmen were attacked by German submarines. It was only then that the case of the "Wilhelmina" was seized upon as an excuse for an illegal policy which had already been adopted and put into practice. The 18th of February did not mark the commencement of illegal German submarine attacks upon peaceful merchantmen, it marked only a belated attempt by Germany to give them a colour of legality by the entirely incorrect suggestion that they were adopted by way of reprisals.

In this respect chronology is Germany's worst enemy. Reprisals follow but cannot precede the action complained of. Admiral Tirpitz's announcement of submarine warfare against British trade on lines entirely contrary to law was made in December, 1914, and neutral as well as British vessels laden with food for Great Britain were attacked and sunk before the circumstances emerged on which Germany bases her excuse. One of these vessels was the American ship "William P. Frye" whose cargo consisted of wheat consigned to Ireland. She was sent to the bottom by a German cruiser with full knowledge of her nationality and of the character of her cargo, and in defiance of international law and of neutral rights.

It must be borne in mind that during all these months from October onwards, while the lives of inoffensive sailors, and the property of peaceful traders, neutral as well as British, were being destroyed, and while the German policy as put into practice was to cut off from the population of Great Britain all supplies of every kind, Germany herself was receiving without let or hindrance food and all other commodities for her population, except actual contraband of war. Food for Germany in neutral ships passed safely through the lines of the British navy. German goods were exported with impunity. And all the time British trade in the same commodities, even in neutral ships, was the subject of attack and outrage. It must be remembered that while these things were being done Great Britain possessed the effective power to cut off all supplies for Germany without an hour's delay or the loss of a single life.

History affords no parallel for such patience combined with effective power. Only when driven by the increasing violence of Germany's attacks and the growing inhumanity of her methods did the British Government announce reprisals. These take the form of the application to Germany of a pressure which she has striven with all her available resources to exert upon ourselves and which her policy as explicitly avowed by both Bismarck and Caprivi has always regarded as just and legitimate in warfare.

Can any man who has followed the conduct of Germany and Great Britain in this matter—the one anarchic in its wild disregard of the sanctity of life, the rights of property and the interests of neutral states; the other calm, deliberate, effective, making scrupulous provision for all legitimate interests and without menace to a single neutral life—doubt which is more in accord with the principles of that law of nations whose object is equal justice and whose sanction is the common sense and good feeling of mankind?

LESLIE SCOTT.

ALEXANDER SHAW.